

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.4198 of 2015.

Date of Decision: 08.09.2015.

Atto (now deceased) through her L.R. Balbir KaurPetitioner.

VERSUS

Gurmukh Singh (Gurpreet Singh) and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. K.B. Raheja, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this revision petition order dated 15.04.2015 passed by learned Civil Judge (Junior Division), Zira, setting aside the exparte judgment and decree dated 15.09.2008 on an application under Order 9 Rule 13 of the Code of Civil Procedure (for short, "the Code") filed by the respondents, has been assailed.

The relevant facts emerging from the pleadings of the petitioner are that civil suit No.249-1 dated 10.04.1996 was filed by her against respondents No.1 to 3 which was decreed exparte in her favour vide judgment and decree dated 15.09.2008 after a long trial of 12 years.

Knowing about the exparte decree, respondents No.1 to 3 filed an application under Order 9 rule 13 of the Code for setting aside the said decree. They pleaded that Gurpreet Singh and Harpreet Singh (respondents No.1 and 2) were minors at the time of trial of the case and were not represented properly by any person.

The application was contested by the petitioner on the grounds that it was not maintainable in the present form and was barred by limitation. Learned trial Court framed issues on the rival contentions of the parties and accorded them opportunity to lead evidence. Considering the evidence produced by the parties and the submissions made on their behalf, the application of the respondents was allowed and the exparte judgment and decree dated 15.09.2008 was set aside vide the impugned order dated 15.04.2015.

Feeling unsatisfied, the present revision petition has been filed.

The submissions made by Mr. K.B. Raheja, learned counsel representing the petitioner have been considered.

The only argument raised by learned counsel for the petitioner is that onus to prove issue No.3, framed on the objection raised by the petitioner that the application for setting aside the exparte decree was time barred, was wrongly placed on the petitioner by the trial Court. It was also decided against the petitioner and the reason for the finding given was that she did not lead any evidence to prove the same. Learned counsel contended that it was for the respondents to prove that the application was within limitation. Since they produced no evidence to rebut the objection of

the petitioner, the issue regarding limitation should have been decided against them.

Issue No.3 was a legal issue and it was for the respondents-applicants to prove that application for setting aside exparte decree filed by them was within limitation. Indeed, trial Court erred in placing onus to prove the said issue on the petitioner (respondent in the application) but for that mere reason, it shall not be judicious to intervene in the impugned order which on merits is legally sustainable. It could not be denied by learned counsel for the petitioner that from the evidence adduced by the respondents as well as the evidence led by the petitioner it stood established that Gurmukh Singh (Gurpreet Singh) and Harpreet Singh were minors at the time of filing of the suit. From the report of the process server, it had come to the notice of the Court that their natural guardian was not acting in consonance with the interest of the minors. No steps were initiated by the Court to issue notices to get the minors represented through a next friend or by appointing a Court guardian. The decree was passed exparte against respondents No.1 and 2 who were not properly served and were not properly represented at the relevant time i.e. during the trial of the case, as they were minors. For the said reasons, the exparte decree against the minors had to be set aside and since it was indivisible in nature, the said benefit was also to be given to respondent No.3.

As a consequence to the aforesaid facts having been proved, the issue of limitation, irrespective of the onus, had to be settled in favour of the respondents. They sought setting aside of the decree on attaining the

age of majority. In that manner, the decision of issue No.3 of learned trial Court is legally correct and therefore the reason assigned makes no difference.

Thus, finding no illegality or perversity in the order of trial Court warranting intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

08.09.2015.
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